

Vaughn R Walker  
ADR/Law Office of Vaughn R Walker  
Four Embarcadero Center, Suite 2200  
San Francisco, CA 94111  
Tel: (415) 871-2888  
[vrw@judgewalker.com](mailto:vrw@judgewalker.com)

IN THE UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
OAKLAND DIVISION

IN RE CATHODE RAY TUBE (CRT) ANTITRUST  
LITIGATION

Master Case No 07-cv-05944-JST

MDL No 1917

This Relates to:

*ALL DIRECT PURCHASER ACTIONS*

*ALL INDIRECT PURCHASER ACTIONS*

**ORDER APPROVING  
SPECIAL MASTER'S REPORT &  
RECOMMENDATION ON PLAINTIFFS'  
MOTION TO COMPEL DEPOSITIONS  
OF IRICO EMPLOYEES LI, XUE AND SI**

On January 26, 2022, the DPPs and the IPPs (together, "Plaintiffs") submitted their Motion to Compel Depositions of Irico Employees Li Miao, Xue Shaowen and Si Yuncong. Defendants Irico Display Devices Co, Ltd and Irico Group Corporation (collectively "Irico") submitted their response dated February 4, 2022. Plaintiffs replied on February 11, 2022. On November 7, 2022, Plaintiffs submitted a letter updating their motion with additional information, contending that these witnesses possessed unique, relevant knowledge. On November 22, 2022, Irico submitted a letter brief in response, disputing the Plaintiffs'

1 assertions. On December 2, 2022, Plaintiffs requested permission to submit their reply and  
2 requested a hearing on this motion.

3 Since the parties' briefs cover the issues well, a hearing is unnecessary. The  
4 undersigned issues this discovery report and recommendation pursuant to the court's  
5 appointments. See ECF 5301, 6107.

## 6 7 **PLAINTIFFS' MOTION TO COMPEL DEPOSITIONS OF IRICO EMPLOYEES**

8 Plaintiffs sought to depose Irico employees Si Yuncong, Xue Shaowen and Li  
9 Miao. On January 26, 2022, Plaintiffs filed their motion to compel these depositions. Irico's  
10 February 4, 2022 response asserted that these three employees were top executives at Irico  
11 whose depositions should not be taken due to Federal Rule of Civil Procedure 26(b)(1), the  
12 "apex doctrine" and the burden of travel restrictions and mandatory quarantines in China and  
13 Hong Kong due to COVID-19.<sup>1</sup> Irico contends that "[n]one of the executives Plaintiffs seek to  
14 depose are likely to have any significant knowledge regarding Plaintiffs' allegations" since two  
15 of the three did not work for Irico at any time during the class period.

16 Irico relies on the "apex deposition" rule applied by courts in the Ninth Circuit to  
17 protect the highest-level corporate executives from being taken away from their significant  
18 duties to be deposed, citing *Opperman v Path, Inc*, 2015 WL 5852962 at \*1 (ND Cal Oct 8, 2015)  
19 (Tigar, J). Under this rule, the court may exercise its discretion to limit discovery by precluding  
20 or limiting a deposition pursuant to the federal rules of civil procedure. *Opperman v Path* at \*1,  
21 Fed R Civ P 26(b)(1)-(2). Courts have considered: (1) whether the deponent has unique first-  
22 hand, non-repetitive knowledge of facts at issue in the case and (2) whether the party seeking  
23 the deposition has exhausted other less intrusive discovery methods. *Id.* That said, a party  
24 seeking to prevent a deposition carries "a heavy burden to show why discovery should be  
25 denied," and if an apex witness has "personal knowledge of facts relevant to the lawsuit – even  
26 if that witness is a corporate president or CEO – she is subject to deposition." *Id.* The purpose

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28 <sup>1</sup> Irico has since dropped its argument about travel restrictions due to COVID-19.  
SPECIAL MASTER'S REPORT & RECOMMENDATION RE PLAINTIFFS' MOTION TO COMPEL DEPOSITIONS

1 of the “apex deposition” rule is “to prevent harassment of a high-level corporate official where  
2 he or she has little or no knowledge.” *Id* at \*2.

3 Irico relies on Judge Illston’s decision prohibiting the deposition of the then  
4 current CEO and Chairman of Sharp in the *TFT-LCD Litigation*, as supporting its position that  
5 plaintiffs have provided no evidence that these witnesses participated in or were otherwise  
6 aware of the conspiracy. 2/4/22 Irico Response at 7 (citing *TFT-LCD*, 2011 WL 10967617, at \*2).

7 Plaintiffs respond that Irico’s reliance on Judge Illston’s order is misplaced  
8 because it “actually supports Plaintiffs’ position” that Messrs Li, Xue and Si are likely to have  
9 unique personal knowledge relevant to the case, and that Judge Illston’s order affirmed the  
10 special master’s findings and contained little discussion of the evidence before the court.  
11 12/2/22 Plaintiffs’ Letter at 1. Plaintiffs cite to the Special Master’s Order re Motion of Indirect  
12 Purchaser Plaintiffs to Compel Sharp Apex Depositions, in *In re TFT-LCD (Flat Panel) Antitrust*  
13 *Litig*, Case No M 07-1827 SI (ND Cal June 20, 2011), ECF No 2932, at 4-7, noting that the special  
14 master relied on the Sharp president’s declaration disavowing any knowledge of the conspiracy,  
15 the fact that ten depositions of individuals involved in the conspiracy had already been taken  
16 and the fact that plaintiffs waited until almost the close of discovery to seek the deposition.  
17 12/2/22 Plaintiffs’ Letter at 2. Plaintiffs argue that their showing of likely knowledge is stronger  
18 because: Irico has provided no evidence supporting their assertions that these witnesses lack  
19 knowledge, only two lower-level Irico employees have been deposed and plaintiffs sought  
20 these depositions over a year ago, well in advance of the close of discovery. *Id*. Plaintiffs point  
21 to their evidence that these Irico employees likely have knowledge of the conspiracy, including  
22 “the implementation of conspiratorial production cuts to decrease supply, the purported price  
23 floors ordered by the Chinese government (a principal part of Irico’s defense), as well as general  
24 knowledge of the CRT industry in China and Irico’s CRT business during the class period.”  
25 2/11/22 Plaintiffs’ Reply at 5.

26 An analysis of the facts pertinent to each of the three Irico employees follows.  
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1       **1. Li Miao**

2               Li Miao currently serves as Chairman and General Manager of Irico Display and  
 3 worked at Irico during the class period in “production and engineering-related roles.” 2/4/2022  
 4 Irico Response at 8. Irico argued that “Plaintiffs have provided no evidence to suggest that his  
 5 prior employment . . . resulted in personal knowledge of any alleged agreements on pricing or  
 6 production stoppages, let alone knowledge that is unique and non-repetitive as required to  
 7 justify a deposition under the apex doctrine,” especially “where Irico is making available two  
 8 other employees who are much more likely to have knowledge relevant to Plaintiffs’  
 9 allegations.” *Id.*

10              Plaintiffs assert that Mr Li was “a senior executive at [Irico] Group during the  
 11 class period, worked with other senior executives (now unavailable) who attended  
 12 conspiratorial meetings, and was in charge of Irico’s principal manufacturing plant for several  
 13 years during the class period.” 12/2/22 Plaintiffs’ Letter at 2. More specifically, Plaintiffs  
 14 provide supporting evidence in the form of annual reports, including excerpts from Irico Group  
 15 Electronic’s 2006 annual report in English stating that Mr Li was “Vice President of the Company  
 16 with effect from 5 August 2005” and “factory director of No. 1 CPT factory . . . as well as general  
 17 manager of IRICO Display Technology Co., Ltd,” having “joined the Company in July 1985.”  
 18 1/26/22 Saveri Declaration ISO Motion to Compel Irico Depositions, ¶18 and Exhibit 15 at 28.  
 19 Plaintiffs also provide an excerpt of Irico Display’s 2007 annual report in Chinese, translated by  
 20 their attorney who reads and understands Chinese, indicating that: (1) “during the class period  
 21 Mr. Li held managerial positions at multiple Irico subsidiaries that supplied key CRT components  
 22 and was general manager at two different Irico CRT factories, one of which was specifically  
 23 export-oriented,” and (2) Mr Li was “Factory Director for Irico’s CPT Plant No. 1 from May 2001  
 24 to July 2005; and he also served as VP at IGE [Irico Group Electronics] from August 2005 to  
 25 December 2007.” 1/26/22 Saveri Declaration, ¶19 and Exhibit 16. Plaintiffs allege that Irico  
 26 and other defendants agreed to and did limit production of CRTs as part of the conspiracy.  
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28 12/2/22 Plaintiffs’ Letter at 2. Plaintiffs further state that “Irico contends that pricing restraints  
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1 based on manufacturing costs imposed by the Chinese government would have prevented the  
2 prices of CRTs from falling absent the alleged conspiracy.” *Id.* As head of Irico’s principal  
3 manufacturing plant during the class period, Plaintiffs contend that Mr Li would likely have first-  
4 hand knowledge whether and how production restraints were implemented as well as CRT  
5 manufacturing costs and any pricing restraints based on those costs. *Id.* at 2.

6 Plaintiffs also point out that Irico “does not deny that it has made no attempt to  
7 determine what relevant knowledge Mr. Li possesses,” and thus conceding its claim that he has  
8 no relevant knowledge “lacks a good faith basis in fact.” *Id.* Apparently Irico has not denied  
9 “that Mr. Li is the only senior executive from the conspiracy period who remains at Irico, and  
10 would be the only witness from Display to sit for deposition.” *Id.* at 3. Plaintiffs provide  
11 deposition testimony from Yan Yunlong, general counsel of Irico Group, on September 28,  
12 2022, that in his phone calls with Mr Li, Yan did not ask what Mr Li knew about Irico employees’  
13 meetings with competitors or production shutdowns amongst Irico and its competitors.  
14 11/7/22 Plaintiffs’ Update Letter at 4-5.

15 In light of Mr Li’s roles described above, including as general manager and  
16 factory director of Irico’s principal manufacturing plant for CRTs, including products for export,  
17 for several years during the class period, it would be reasonable to expect that he has first-  
18 hand, non-repetitive knowledge of how and when Irico’s CRT production levels were set and  
19 changed as well as CRT manufacturing costs and pricing restraints during the class period. This  
20 information is relevant to Plaintiffs’ allegations of a conspiracy to control prices via production  
21 levels and pricing of CRTs during the class period. It appears undisputed that Mr Li is the only  
22 senior executive from the class period who remains at Irico and would be the only witness from  
23 Irico Display with relevant knowledge of its manufacturing during the class period to be  
24 deposed. *See* 12/2/22 Plaintiffs’ Letter at 3. Hence, Mr Li appears to have unique, first-hand,  
25 non-repetitive knowledge of facts relevant to the claims and defenses in this action, which  
26 information cannot be obtained from another source that is more convenient or less  
27 burdensome. It appears undisputed that the two Irico witnesses who have been deposed,  
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Messrs Wang Zhaojie<sup>2</sup> and Yan Yunlong,<sup>3</sup> provided very little information on the topics noted of which Mr Li would possess personal knowledge. See Plaintiffs' 11/7/22 Letter at 3 and Plaintiffs' 12/2/22 Letter at 3. Plaintiffs have also sought other, less intrusive forms of discovery but those avenues have not been productive. *Id.* Under these circumstances, the record does not support blocking the deposition of Mr Li under the "apex deposition" rule. This does not appear to be a situation in which the deposition would constitute harassment of a high-level corporate official with little or no knowledge of relevant facts. Accordingly, Plaintiffs' motion to compel the deposition of Li Miao is GRANTED. The undersigned orders Irco to make Li Miao available for deposition no later than January 31, 2023 or at a later date acceptable to Plaintiffs.

## 2. Xue Shaowen

Xue Shaowen currently serves as Chairman, Executive Director and legal representative of a subsidiary of Irco Display (Xianyang Irco Optoelectronics Technology Co, Ltd) and Deputy General Manager of Irco Display. 2/4/22 Irco Response at 2. Mr Xue held "production-related roles at Huafei during the class period." 2/4/22 Irco Response at 8. Huafei was another CRT manufacturer during the class period that held meetings with Irco. 12/2/22 Plaintiffs' Letter at 3. Irco contends that "Plaintiffs have failed to show that Mr. Xue has unique knowledge of topics that could not be covered by Messrs Wang<sup>4</sup> or Su<sup>5</sup> in their upcoming depositions." 2/4/22 Irco Response at 8. Irco further argues that "Plaintiffs' sudden interest in Huafei, after taking over one hundred depositions in this matter, is indicative only of a desire to harass Irco's current executives." *Id.*

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<sup>2</sup> Mr Wang Zhaojie attended, as an Irco employee, at least five meetings of the China CPT Industry Association from 1998-2000. 1/26/22 Saveri Decl, Ex 3 at 8 (Irco's Supplemental Response to Interrogatory No 3).

<sup>3</sup> Mr Yan Yunlong is Irco's current general counsel who assisted in preparation of Irco's discovery responses and worked at Irco's No 1 CRT general plant during the class period. ECF 6115 at 9; 1/26/22 Saveri Decl, Ex 3 at 7; 11/7/22 Heaphy Decl at Ex 6.

<sup>4</sup> Mr Wang Zhaojie.

<sup>5</sup> Mr Su Xiaohua, now a former Irco employee, was Irco Group's general manager of purchasing and sales for at least eight years during the class period. ECF 6115 at 10.

1 According to Plaintiffs, Messrs Xue and Si were senior executives of another conspirator,  
2 Huafei, not named as a defendant in this action, which sent employees to attend meetings with  
3 Irico representatives. 12/2/22 Plaintiffs' Letter at 3.

4           It appears undisputed that Xue Shaowen was a manager of Huafei's CRT  
5 manufacturing plant during the class period. See 2/11/22 Plaintiffs' Letter at 5. As such, Mr  
6 Xue is likely to possess unique, first-hand, non-repetitive knowledge of the Chinese CRT  
7 industry during the class period, including information regarding implementation of production  
8 cuts and government-imposed price floors based on production costs and other factors. This  
9 information is relevant to the claims and defenses in this action and does not appear to have  
10 been obtained from the other two Irico witnesses that Irico has provided for deposition.  
11 Whether Mr Xue or any other Huafei employee had been deposed in the earlier stages of this  
12 MDL litigation is of no consequence to this motion to compel because each motion presents a  
13 unique set of facts and law.

14           Accordingly, the undersigned GRANTS Plaintiffs' motion to compel the  
15 deposition of Xue Shaowen and orders Irico to make him available for deposition no later than  
16 January 31, 2023 or at a later date acceptable to Plaintiffs.

### 18           **3. Si Yuncong**

19           Si Yuncong is the current Chairman, Party secretary and legal representative of  
20 Irico Group, who joined Irico in May 2013. He held prior managerial positions at Huadong  
21 Electronics, a 20% minority investor in Huafei, which Plaintiffs allege sent representatives to  
22 attend competitor meetings with Irico employees. Irico contends that Plaintiffs never sought to  
23 depose Mr Si earlier despite deposing eleven Philips witnesses, which "confirms his lack of  
24 relevance to the claimed issues for which Plaintiffs claim to seek his deposition." 2/4/22 Irico  
25 Response at 7. As noted above, this last argument carries no weight.

Due to Mr Si's high-level, current role at Irico Group and the presumed availability of other witnesses, namely Messrs Xue and Li, to address the topics of CRT production cuts, governmental price floors, general knowledge of the CRT industry in China and Irico's CRT business during the class period, the undersigned would exercise discretion at this time and DENY Plaintiffs' motion to compel Mr Si's deposition on condition that: (1) Irico commits in writing no later than January 13, 2023 to present Messrs Xue and Li for depositions no later than January 31, 2023 or a later date acceptable to Plaintiffs; (2) Irico submits to the undersigned sworn declarations by Messrs Xue and Li dated no later than January 13, 2023, stating their commitment and ability to appear for their depositions no later than January 31, 2023 and providing their dates of availability; and (3) Irico in fact presents Messrs Xue and Li for their depositions to be held no later than January 31, 2023 or later dates acceptable to Plaintiffs. If any one of these conditions is not met, the undersigned would exercise discretion to GRANT Plaintiffs' motion to compel Mr Si's deposition, effective on the first date that any of the above conditions is not met and would order Irico to make him available for deposition forthwith and no later than 10 business days thereafter or a later date acceptable to Plaintiffs.

#### **WHETHER IRICO DISPLAY IS REPRESENTED BY COUNSEL IN THIS CASE**

Plaintiffs note the deposition testimony of Irico witness Yan Yanlong, who testified that Irico Group no longer controls Irico Display and that since Mr Long Tao, the employee at Irico Display who was responsible for coordinating Display's compliance with discovery in this case, departed the company in June 2021, Mr Yan had had only intermittent contact with Irico Display. 12/02/2022 Plaintiffs' Letter at 3. Plaintiffs contend that Mr Yan's testimony raises "serious issues regarding the authority of Group, and by extension Baker Botts, to represent Display, as well as Display's fulfillment of its discovery and other obligations in this case." *Id.* Plaintiffs note that Irico Display's disengagement from this case is another reason to compel Mr Li's deposition.



1 No later than January 13, 2023, Irico's counsel is requested to submit a letter to  
2 the undersigned confirming or denying its representation of the Irico defendants.

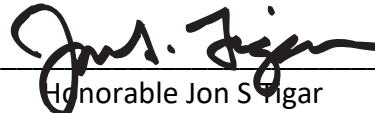
3  
4 Date: December 23, 2022



5  
6 Vaughn R Walker  
United States District Judge (Ret)

7  
8 The Recommended Order of the Special Master is Accepted and Ordered ~~/Denied/Modified~~,  
9 except that all January 13, 2023 deadlines are extended to January 20, 2023.

10  
11 Date: January 13, 2023



12  
13 Honorable Jon S Figar  
14 United States District Judge